

## § 1001.3

### **§ 1001.3 Requests to inspect other records not considered public under 5 U.S.C. 552.**

Requests to inspect records other than those now deemed to be of a public nature shall be in writing and addressed to the Freedom of Information Officer (Officer). The Officer shall determine within 10 days of receipt of a request (excepting Saturdays, Sundays, and legal public holidays) whether a requested record will be made available. If the Officer determines that a request cannot be honored, the Officer must inform the requesting party in writing of this decision and such letter shall contain a detailed explanation of why the requested material cannot be made available and explain the requesting party's right of appeal. If the Officer rules that such records cannot be made available because they are exempt under the provisions of 5 U.S.C. 552(b), an appeal from such ruling may be addressed to the Chairman. The Chairman's decision shall be administratively final and state the specific exemption(s) contained in 5 U.S.C. 552(b) relied upon for denial. Such an appeal must be filed within 30 days of the date of the Freedom of Information Officer's letter. The Chairman shall act in writing on such appeals within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of any appeal. In unusual circumstances, as set forth in 5 U.S.C. 552(a)(6)(B), the time limit may be extended, by written notice to the person making the particular request, setting forth the reasons for such extension, for no more than 10 working days. If the appeal is denied, the Chairman's order shall notify the requesting party of his or her right to judicial review. Charges shall be made as provided for in § 1002.1(f) of this chapter.

### **§ 1001.4 Predisclosure notification procedures for confidential commercial information.**

(a) *In general.* Confidential commercial information provided to the Interstate Commerce Commission or the Board shall not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section. For such purposes, the following definitions apply:

## 49 CFR Ch. X (10–1–14 Edition)

(1) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitters.* Except as provided in paragraph (g) of this section, the Board, to the extent permitted by law, shall provide a submitter with prompt written notice, in accordance with paragraph (c) of this section, of receipt of an FOIA request encompassing its submissions. This notice shall either describe the exact nature of the information requested or provide copies of the records themselves.

(c) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The Board has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(2) The information has been designated, in good faith by the submitter, as confidential commercial information at the time of submission or within a reasonable time thereafter. Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.*

(1) Through the notice described in paragraph (b) of this section, the Board shall afford a submitter a reasonable period of time in which to provide it with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding the requested information.

(2) When notice is given to a submitter under this section, the Board also shall notify the requester that it has been provided.